

HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No.1403 of 1991

Date of decision : 21.02.2007

Rup Chand

.....Petitioner

versus

Tara Chand

....Respondent

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Ajay Jain, Advocate for the petitioner.

* * *

ORDER

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned First Appellate Court dated 18.11.1988, whereby delay of 36 days in filing the first appeal was not condoned and the memorandum of appeal was rejected.

The plaintiff-petitioner filed a suit for possession of a room as described in the plaint. The said suit was dismissed on 24.12.1987. Aggrieved against the said judgment and decree, the plaintiff filed first appeal on 10.3.1988 alongwith an application under Section 5 of the Limitation Act, 1963 for condonation of delay in filing the appeal. The petitioner sought delay on the ground that his Attorney Smt.Kailash Devi remained ill and was under treatment of Dr.Subhash of Subhash Hospital, Rewari. Since the village of the petitioner is at some distance from Dharuhera, so she came to Rewari to obtain treatment. Therefore, the petitioner could not file the appeal within the period of limitation.

The Hon'ble Supreme Court of India in **N.Balakrishnan versus Krishnamurthy, A.I.R. 1998 S.C.-3222**, has held to the following effect;

“It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation.”

In view thereof, it is apparent that the appellant had reasonable reasons of not filing appeal within time. Such delay cannot be said to be part of dilatory tactics or lacking in bonafide. In fact, the suit is for possession. The delay in filing appeal is at his own peril.

Therefore, the present revision petition is allowed. The delay of 36 days in filing the first appeal is condoned.

Petitioner through his counsel is directed to appear before the learned First Appellate Court on 26.3.2007 for further proceedings, in accordance with law.

February 21, 2007
**mohinder*

(HEMANT GUPTA)
JUDGE